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Committee on the Peaceful
Uses of Outer Space

Report of the Legal Subcommittee on the work of its thirty-eighth session (1-5 March 1999)

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I. Introduction

A. Opening of the session and election of the Chairman

1. The Legal Subcommittee held its thirty-eighth session at the United Nations Office at Vienna from 1 to 5 March 1999 under the chairmanship of Vladimír Kopal (Czech Republic).

2. At its opening (613th) meeting, on 1 March, the Legal Subcommittee was informed that Václav Mikulka (Czech Republic) would be unable to complete his three-year term of office as Chairman of the Legal Subcommittee. In that connection, the Subcommittee recalled the agreement reached in 1997 on the working methods of the Committee on the Peaceful Uses of Outer Space and its subsidiary bodies,[1] which had been endorsed by the General Assembly in its resolution 52/56 of 10 December 1997. That agreement provided, *inter alia*, that when any officer could not complete a term, the regional group holding the office concerned should nominate a candidate to be elected at the beginning of the session that immediately followed the termination of that officer's tenure. The Subcommittee elected Vladimír Kopal (Czech Republic) to complete the three-year term of office vacated by Mr. Mikulka, subject to the retroactive approval of the Committee on the Peaceful Uses of Outer Space at its forty-second session, in 1999.[2]

3. The Subcommittee expressed its profound gratitude for the guidance and exemplary work of the outgoing Chairman, Mr. Mikulka.

4. Also at the opening meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its current session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.613).

B. Adoption of the agenda

5. At its opening meeting, the Legal Subcommittee adopted the following agenda:

1. Opening of the session and election of the Chairman.
2. Statement by the Chairman.
3. Question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
4. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.
5. Review of the status of the five international legal instruments governing outer space.
6. Other matters.

C. Attendance

6. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakhstan, Kenya, Lebanon, Mexico, Morocco, Netherlands, Nigeria, Philippines, Poland, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Sudan, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Viet Nam.

7. Representatives of the following specialized agencies and international organizations attended the session: United Nations Educational, Scientific and Cultural Organization (UNESCO), International Telecommunication Union (ITU), European Space Agency (ESA), International Astronautical Federation (IAF), International Organization of Space Communications (INTERSPUTNIK) and International Telecommunications Satellite Organization (INTELSAT).

8. The Chairman informed the Subcommittee at its 613th and 615th meetings that requests to participate in meetings of the Subcommittee had been received from the permanent representatives of Bolivia, Costa Rica, Peru, Slovakia, Tunisia and the United Arab Emirates and from the permanent observer for the League of Arab States (LAS). The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on

the Peaceful Uses of Outer Space, the Subcommittee could take no formal decision on the matter, but that the representatives of Bolivia, Costa Rica, Peru, Slovakia, Tunisia and the United Arab Emirates and the observer for LAS might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

9. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies and other organizations attending the session and of staff members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF/31.

D. Organization of work

10. In accordance with decisions taken at its opening meeting, the Legal Subcommittee organized its work as follows:

(a) The Subcommittee recalled its recommendation, endorsed by the Committee on the Peaceful Uses of Outer Space,[3] that the Legal Subcommittee rotate each year the order of consideration of substantive agenda items on a permanent basis[4] and that it consider the substantive items on its agenda (see para. 5 above) in the following order: items 3, 5, 4 and 6;

(b) In accordance with the recommendation endorsed by the Committee on the Peaceful Uses of Outer Space,[5] the Subcommittee agreed to suspend, for the current session, its Working Group on agenda item 3;

(c) The Subcommittee re-established its Working Group on agenda item 4, open to all members of the Subcommittee, and agreed that Daniel Eduardo Amigo (Argentina) should serve as its Chairman;

(d) In accordance with the recommendation endorsed by the Committee on the Peaceful Uses of Outer Space,[6] the Subcommittee established a working group on agenda item 5, open to all members of the Subcommittee, and agreed that Vassilios Cassapoglou (Greece) should serve as its Chairman;

(e) In accordance with the recommendation of the Committee on the Peaceful Uses of Outer Space,[7] the Subcommittee continued its informal consultations, led by its Chairman, with a view to coming up with a list of annotated items agreed upon by consensus that could be considered by the Committee at its forty-second session for possible inclusion in the agenda of the Subcommittee;

(f) The Subcommittee began its work each day with a plenary meeting to hear delegations wishing to address it and then it adjourned and reconvened, when appropriate, as a working group.

11. The following delegations participated in the general exchange of views: Argentina, China, France, Germany, Greece, Italy, Japan, the Russian Federation and the United States, as well as IAF. The views expressed by those delegations are contained in unedited verbatim transcripts (COPUOS/Legal/T.613-615).

12. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies. In view of that, the Chairman proposed, and the Subcommittee agreed, that the following measures, similar to those adopted previously, should be adopted at the current session of the Subcommittee:

(a) The Subcommittee and its working groups should begin their meetings punctually at the scheduled time, even if there was no quorum (16 members);

(b) The morning meetings of the Subcommittee or its working group should begin at 10 a.m., on the understanding that that did not relate to and did not affect the question of the length of the session;

(c) Delegations wishing to speak at the next plenary meeting of the Subcommittee should inform the Chairman of their intention before the adjournment of the previous plenary meeting; if no such information was received by the Chairman, the next plenary meeting of the Subcommittee should be cancelled and a working group should meet instead;

(d) Conference services should be notified as early as possible whenever it was anticipated that any of the services usually provided were not going to be required; if possible, prior notice of 24 hours should be given;

(e) The Chairman should set a deadline for closing the list of speakers for the general exchange of views and for each of the substantive agenda items;

(f) There should be a possibility of holding informal meetings and consultations outside the work schedule of the Subcommittee;

(g) Working group meetings could be cancelled on an ad hoc basis if informal consultations were required;

however, the practice of cancelling those meetings in advance in order to conduct informal consultations should not be reintroduced. Informal consultations (i.e. those outside the auspices of the Subcommittee and its working groups) should not interrupt the work of the Subcommittee or its working groups;

(h) Informal meetings and consultations of the Subcommittee and its working groups held in the framework of the work schedule of the Subcommittee should be provided with interpretation services;

(i) When adopting and following the schedule of work, the Subcommittee should exercise flexibility in the allocation of time for consideration of items on its agenda. If the time previously allocated for the consideration of an item was not fully used or was unlikely to be used, the Subcommittee should seek, on the basis of consensus, to use the time for the consideration of other items on the agenda or, as the case might be, consider the possibility of concluding the session ahead of the scheduled date. The adoption of that measure was without prejudice to the position of various delegations concerning the duration of the sessions of the Subcommittee;

(j) The general rule for annexing documents to the report of the Subcommittee should be that normally any document would be annexed, if at all, only once to the report of the session in which it was first submitted, but not to later reports.

13. The Subcommittee agreed that a similar flexible organization of work as agreed upon at the current session would serve as the basis for organizing the work of its thirty-ninth session.

14. At the opening meeting, the Chairman recalled the recommendation of the Committee on the Peaceful Uses of Outer Space that the current session of the Subcommittee meet for five days.[8] The adoption of the above measures was agreed upon on an exceptional basis for 1999 only, so that the saving resulting from the shortening of the sessions could be utilized for the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III).[9]

15. The Legal Subcommittee recommended that its thirty-ninth session be held from 27 March to 7 April 2000 and that the substantive items of the agenda be considered in the following order: items 3, 5, 4 and 6. The adoption of the above measures was without prejudice to the positions of various delegations concerning the duration of the sessions of the Subcommittee.

16. The Subcommittee noted that in view of the shortening of the sessions of the Committee and the Scientific and Technical and Legal Subcommittees in 1999 and the fact that the International Institute of Space Law (IISL) would organize an eight-session workshop on space law as part of the UNISPACE III Technical Forum, there would be no IISL/European Centre for Space Law (ECSL) symposium during the current session of the Legal Subcommittee. The latter agreed that IISL and ECSL should be invited to hold a symposium on space law at the thirty-ninth session of the Legal Subcommittee.

17. The Subcommittee held a total of nine meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.613-621).

18. At its 621st meeting, on 5 March, the Subcommittee adopted the present report and concluded the work of its thirty-eighth session.

II. Question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (agenda item 3)

19. The Chairman made an introductory statement on agenda item 3 at the opening (613th) meeting, on 1 March.

20. The Chairman drew attention to the fact that the General Assembly, in its resolution 53/45 of 3 December 1998, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its consideration of the question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (Assembly resolution 47/68 of 14 December 1992).

21. As mentioned in paragraph 10 (b) above, the Legal Subcommittee, at its 613th meeting, decided not to re-establish its Working Group on agenda item 3.

22. The Legal Subcommittee recalled its recommendation, made at its thirty-seventh session and subsequently endorsed by the Committee,[10] that, at its thirty-ninth session, consideration by the Working Group on agenda item 3 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space again be suspended pending the results of the work of the Scientific and Technical Subcommittee, without prejudice to the possibility of

reconvening the Working Group if, in the opinion of the Legal Subcommittee, sufficient progress had been made in the Scientific and Technical Subcommittee at its thirty-seventh session, in the year 2000, to warrant the reconvening of the Working Group.

23. The view was expressed that strict safety precautions should be exercised in connection with any use of nuclear power sources in outer space and that they should be such as to guarantee the sustainability and use of outer space. That delegation was also of the opinion that the subject of the use of nuclear power sources in outer space would need to form an integral part of any future discussion within the Legal Subcommittee on issues relating to space debris.

24. The view was also expressed that the scientific and technical aspects of the use of nuclear power sources in outer space should be studied in order to develop further the legal issues involved, especially in relation to collisions between nuclear-powered objects and space debris. That delegation also expressed the view that emerging technological developments could require the revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space in the future, as had been anticipated upon their adoption by the General Assembly in its resolution 47/68.

25. The full text of the statements made by delegations during the discussion on agenda item 3 are contained in an unedited verbatim transcript (COPUOS/Legal/T.613).

III. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (agenda item 4)

26. The Chairman made an introductory statement on agenda item 4 at the 615th meeting, on 2 March. He referred to the work of the Legal Subcommittee at its thirty-seventh session, in 1998.

27. The Chairman drew attention to the fact that the General Assembly, in its resolution 53/45, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, at its thirty-eighth session, taking into account the concerns of all countries, in particular those of developing countries, continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of ITU.

28. The attention of the Legal Subcommittee was drawn to the text of a questionnaire on possible legal issues with regard to aerospace objects, which it had finalized at its thirty-fourth session (A/AC.105/607 and Corr.1, annex I, appendix). At its thirty-fourth session, the Subcommittee had agreed that the purpose of the questionnaire was to seek the preliminary views of States members of the Committee on the Peaceful Uses of Outer Space on various issues relating to aerospace objects (A/AC.105/607 and Corr.1, para. 38). A note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Add.1-5) had been before the Subcommittee at its thirty-seventh session, in 1998. At its thirty-seventh session, the Subcommittee had also had before it a note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), which had been before the Subcommittee at its thirty-sixth session.

29. The attention of the Legal Subcommittee was also drawn to the following documents that had also been before it at its thirty-seventh session: a working paper prepared by the Secretariat in cooperation with ITU entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary satellite orbit' with the existing regulatory procedures of the International Telecommunication Union relating to the use of the geostationary orbit" (A/AC.105/C.2/L.205), submitted to the Subcommittee at its thirty-sixth session; a working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted by Colombia to the Subcommittee at its thirty-fifth session; and a conference room paper (A/AC.105/C.2/1997/CRP.3/Rev.1) containing a compendium of relevant sections

and/or documents referred to in the working paper submitted by Colombia, which had been before the Subcommittee at its thirty-sixth session. In addition, reference was made to the agreement that had been reached at the forty-first session of the Committee on the Peaceful Uses of Outer Space, in 1998, concerning universal acceptance of the scientific principles formulated in a working paper entitled "Examination of the physical nature and technical attributes of the geostationary orbit; examination of its utilization and applications, including, *inter alia*, in the field of space communications, as well as other questions relating to space communications developments, taking particular account of the needs and interests of developing countries" (A/AC.105/C.1/L.216), which had been submitted by the Czech Republic to the Scientific and Technical Subcommittee at its thirty-fifth session.

30. Some delegations, while noting the work undertaken by ITU relating to the scientific and technical aspects of the utilization of the geostationary orbit, expressed the view that, as mandated by the General Assembly, the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee were the competent bodies to discuss the legal and political aspects of the geostationary orbit. While they were of the view that the Legal Subcommittee was the appropriate forum in which to deal with the legal and political issues of the geostationary orbit, they also believed that the regulation of the technical aspects of the geostationary orbit should continue to be entrusted to ITU.

31. Some delegations expressed the view that there was a need to establish a *sui generis* legal regime for regulating access to and the use of the geostationary orbit, which was a limited natural resource. Such a regime should guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries. The view was also expressed that such a regime should take into account, in particular, the needs of the equatorial countries, owing to their special geographical characteristics.

32. The view was expressed that the establishment of a *sui generis* regime was only one of the elements to be discussed by the Legal Subcommittee in order to regulate access to and use of the geostationary orbit.

33. The view was expressed that the legal regime applying to outer space had been established once and for all by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex) (the "Outer Space Treaty") and thus the status of any satellite orbit, including the geostationary orbit, was fully covered by the provisions of that Treaty. With regard, therefore, to space activities for telecommunications purposes, ITU was the sole competent body responsible for regulating the use of the radio frequencies and related orbits, including the geostationary orbit, that were used by the various radiocommunication services, by virtue of the provisions of article 44 of its constitution, recently amended by the Plenipotentiary Conference of ITU, held in Minneapolis, United States, in 1998.

34. The view was expressed that the document prepared by the Secretariat in cooperation with the secretariat of ITU (A/AC.105/C.2/L.205) was an important contribution to their work and that negotiations should be continued in order to reach a consensus on the issues relating to the geostationary orbit.

35. The view was expressed that any legal principles of a possible future legal regime of the geostationary orbit, which was a part of outer space, should be consistent with the principles and rules of the Outer Space Treaty, which was the common legal framework for all activities in outer space and that, therefore, the future legal regime of the geostationary orbit should not be described in advance as a *sui generis* regime, since that status would depend on the rules and principles agreed upon.

36. Some delegations expressed the view that the working paper submitted by Colombia (A/AC.105/C.2/L.200 and Corr.1) provided a sound basis for achieving a solution related to the use of the geostationary orbit and that the Legal Subcommittee should continue its consideration of the item.

37. The Subcommittee agreed that the working paper submitted by the Czech Republic to the Scientific and Technical Subcommittee (A/AC.105/C.1/L.216) provided a scientific and technical basis for further discussions in the Legal Subcommittee on the utilization of the geostationary orbit. The view was expressed that, while the scientific principles formulated in the working paper submitted by the Czech Republic were acceptable, a comprehensive analysis of the legal aspects, as well as the scientific and technical aspects, of the geostationary orbit in one single document was required, taking into consideration the regulations of ITU, as the examination of those issues should not be approached in a piecemeal manner.

38. The view was expressed that the replies to the questionnaire and the comprehensive analysis of those replies

prepared by the Secretariat (A/AC.105/635 and Add.1-5) provided the basis for moving ahead towards consensus on the issue of the delimitation and definition of outer space.

39. The full texts of the statements made by delegations during the discussion on agenda item 4 are contained in unedited verbatim transcripts (COPUOS/Legal/T.615 and 617-619).

40. As mentioned in paragraph 10 (c) above, the Legal Subcommittee, at its 613th meeting, re-established the Working Group on agenda item 4 under the chairmanship of Daniel Eduardo Amigo (Argentina).

41. The Working Group on agenda item 4 held three meetings. At the 621st meeting, on 5 March, the Chairman of the Working Group reported to the Legal Subcommittee. The Subcommittee took note of the report of the Working Group, which is contained in annex I to the present report.

IV. Review of the status of the five international legal instruments governing outer space (agenda item 5)

42. The Chairman made an introductory statement on agenda item 5, "Review of the status of the five international legal instruments governing outer space", at the 613th meeting, on 1 March.

43. The Chairman drew attention to the fact that the General Assembly, in its resolution 53/45, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its review of the status of the five international legal instruments governing outer space and that the Subcommittee establish a working group to consider that item. The Subcommittee noted that that was in accordance with the proposed work plan for the agenda item that had been approved by the Subcommittee at its thirty-sixth session.

44. The Subcommittee had before it a note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1) and working papers on the subject submitted to the Subcommittee at its thirty-seventh session by Germany on behalf of the member States of ESA and States having signed cooperation agreements with ESA (A/AC.105/C.2/L.211/Rev.1, paras. 2-9) and by the Russian Federation (A/AC.105/C.2/L.213).

45. The Subcommittee noted with satisfaction the preliminary list of international agreements and other available legal documents relevant to space-related activities, prepared by the Secretariat as a working document for Member States pursuant to a request by the Subcommittee at its thirty-seventh session (A/AC.105/698, para. 59).

46. The Subcommittee recalled that the purpose of agenda item 5, as recommended by it at its thirty-sixth session (A/AC.105/674, para. 43) and endorsed by the Committee on the Peaceful Uses of Outer Space at its fortieth session,[11] was not in any way to reopen substantive debate on or to revise or amend the five international legal instruments governing outer space.

47. Some delegations expressed the view that such a review would make it possible to determine the de facto status of the legal instruments governing outer space at the present time and might well lead to the identification of additional agenda items aimed at the substantive review of the instruments.

48. The view was also expressed that, before any modification of the legal instruments occurred, the international community should strive for universal acceptance of the instruments.

49. The view was expressed that, while some clarification might be required of specific terms within the legal instruments governing outer space, the practical adherence of States to both the letter and spirit of the instruments to which they were already parties was the most important priority on which the Legal Subcommittee should focus its attention under agenda item 5.

50. The view was expressed that, in order to encourage States to consider ratifying or acceding to the five legal instruments governing outer space, consideration should be given to the provision of technical advice concerning the benefits that those States would enjoy from making such ratifications or accessions.

51. Some delegations expressed the view that greater practical adherence to the principles embodied in the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI) of 29 November 1971, annex) could be achieved if more States were to make declarations in accordance with paragraph 3 of resolution 2777 (XXVI), thereby binding themselves on a reciprocal basis to the decisions of the Claims Commission established in accordance with

article XIV of the Convention. Those delegations also expressed the view that such declarations by States parties would enhance the effectiveness and credibility of the Convention.

52. Some delegations expressed the view that, with the rapid evolution of technology and organization of space activities, the Legal Subcommittee needed to maintain its leading role in the development of legal principles and the identification of improvements to the existing legal principles and instruments governing the peaceful uses of outer space.

53. The full text of the statements made by delegations during the debate on agenda item 5 are contained in unedited verbatim transcripts (COPUOS/Legal/T.613-617).

54. As mentioned in paragraph 10 (d) above, the Legal Subcommittee, at its 613th meeting, established a working group on agenda item 5 under the chairmanship of Vassilios Cassapoglou (Greece).

55. The Working Group on agenda item 5 held six meetings. At the 621st meeting, on 5 March, the Chairman of the Working Group reported to the Legal Subcommittee. The Subcommittee took note of the report of the Working Group, which is contained in annex II to the present report.

V. Other matters (agenda item 6)

56. At the 616th meeting, on 2 March, the Chairman introduced agenda item 6, "Other matters".

57. The text of the statements made by delegations during the debate on the contribution of the Legal Subcommittee to UNISPACE III and on future work, reflected in paragraphs 66-76 below, are contained in unedited verbatim transcripts (COPUOS/Legal/T.616-619).

A. Informal consultations on new items for the agenda

58. In accordance with General Assembly resolution 53/45, the Legal Subcommittee continued to conduct informal consultations on specific proposals already made concerning possible new agenda items for the Subcommittee. The Subcommittee recalled the agreement of the Committee on the Peaceful Uses of Outer Space at its thirty-ninth session that each item proposed should have a multi-year work plan that would address, among other things, the objectives of the work to be undertaken, any reports to be provided by the Secretariat and Member States and the possible end-product.[12]

59. The Legal Subcommittee recalled that, at its thirty-seventh session, in 1998, the following items had been discussed for possible inclusion in its agenda (A/AC.105/698, paras. 67-69):

(a) Commercial aspects of space activities (e.g. property rights, insurance and liability), proposed by the delegation of Argentina;

(b) Review of existing norms of international law applicable to space debris, proposed by the delegation of the Czech Republic;

(c) Legal aspects of space debris, proposed by the delegations of Brazil and the Czech Republic;

(d) Comparative review of the principles of international space law and international environmental law, proposed by the delegation of Chile;

(e) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting and the Principles Relating to Remote Sensing of the Earth from Outer Space, with a view to possibly transforming these texts into treaties in the future, proposed by the delegation of Greece;

(f) Improvement of the Convention on Registration of Objects Launched into Outer Space, proposed by the delegation of Germany on behalf of the member States of ESA and States having signed cooperation agreements with ESA;

(g) Examination of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 as a model to encourage wider accession to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, proposed by the delegation of the Netherlands.

60. The Legal Subcommittee also recalled that, at its thirty-seventh session, after informal consultations on new agenda items, it had been informed of the following (A/AC.105/698, para. 71):

(a) Spain had withdrawn its proposal entitled "Comparative study of the provisions of the law of the sea and international space law", noting that it had been similar to the proposal by the Netherlands;

(b) Brazil, Greece and the Netherlands had announced that their proposals could be considered at a later stage, as other items being considered could have higher priority;

(c) Argentina and Chile had announced that a work plan would be submitted with regard to their respective proposals.

61. The Subcommittee noted that, following the proposal by its Chairman, discussions on the proposal submitted by Germany on behalf of the member States of ESA and States having signed cooperation agreements with ESA, as contained in section III of its working paper (A/AC.105/C.2/L.211/Rev.1), had continued in the Committee on the Peaceful Uses of Outer Space, with a view to possibly reaching consensus on including the item proposed in the working paper as a new item on the agenda of the Subcommittee. At its forty-first session,[13] the Committee had noted that inter-sessional consultations among interested delegations before the current session of the Subcommittee would be welcome in order to seek a consensus on that matter.

62. The Subcommittee noted with satisfaction that the inter-sessional consultations on the concept of the "launching State", open to all interested Member States, had been held and that the report on those consultations had been made available to the Subcommittee (A/AC.105/L.217). The Subcommittee also noted that, in accordance with the mandate for the inter-sessional consultations by the Committee, the results of those consultations as contained in that report would be formally presented for discussion and adoption by the Committee at its forty-second session, in 1999.

63. The Subcommittee also noted that, at its forty-first session, the Committee on the Peaceful Uses of Outer Space had agreed that the Scientific and Technical Subcommittee and the Legal Subcommittee would invite special presentations on new launch systems and ventures at their sessions in 2000 with a view to attaining a better understanding of those launch activities.[14]

64. The Legal Subcommittee noted that Argentina had submitted a working paper (A/AC.105/C.2/L.215) containing a work plan for the item that it had proposed (see para. 59 (a) above). The working paper is contained in annex III to the present report.

65. Following informal consultations, no consensus was reached on the recommendation to include new items in the agenda of the Legal Subcommittee. The Chairman informed the Subcommittee that the delegation of Germany had proposed to include an item entitled "Review of the concept of the 'launching State' " in the list of items for possible inclusion in the agenda of the Subcommittee (see para. 62 above).

B. Contribution of the Legal Subcommittee to the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)

66. The Legal Subcommittee recalled that the Committee had welcomed the fact that the Subcommittee had agreed to make a contribution to the deliberations of UNISPACE III on issues relating to the promotion of international cooperation in space-related activities and the development of space law, as well as on other legal issues. The Subcommittee also recalled that the Committee had endorsed its recommendation that the Chairman of the Subcommittee report to UNISPACE III on the work of the Subcommittee, including its past achievements, current work and new challenges in the development of space law.[15]

67. The Subcommittee had before it a note by the Secretariat containing a text of a draft report of its Chairman to UNISPACE III (A/AC.105/C.2/ 999/CRP.6). The Subcommittee noted that the draft report would be presented to UNISPACE III as a report of the Chairman of the Subcommittee and that the text would not necessarily reflect the collective views of the Subcommittee on the issues covered in the report.

68. The Subcommittee reviewed the draft report of its Chairman and provided comments on the text. It noted the statement by the Chairman that the draft report would be revised based on those comments and that the final text would be presented to UNISPACE III.

69. The Subcommittee also had before it a note by the Secretariat (A/AC.105/C.2/1999/CRP.7/Rev.1) containing the text of the subsection entitled "International space law" of the draft report of UNISPACE III as revised by the Advisory Committee at its 1998 session (A/CONF.184/PC/1).

70. The Subcommittee reviewed the text of the subsection entitled "International space law" of the draft report and provided comments on the text. The Subcommittee agreed that those comments should be reflected in the final full draft report to be prepared by the

Secretariat and to be distributed to all Member States well ahead of the 1999 session of the Preparatory Committee.

71. The Legal Subcommittee also noted that comments had been made on the text of paragraph 323 of the draft report of UNISPACE III, which was not in the subsection entitled "International space law". The Subcommittee agreed that those comments should be brought to the attention of the Preparatory Committee. The Subcommittee noted that, if the Preparatory Committee agreed, the comments would be forwarded to UNISPACE III.

C. Future work

72. The Legal Subcommittee considered the matters relating to its future work, in particular the structure of the agenda for its thirty-ninth session, in 2000, and subsequent sessions.

73. The Legal Subcommittee noted that Germany had submitted, on behalf of Austria, Canada, France, Greece, India, the Netherlands, Sweden and the United States, a working paper entitled "Revision of the agenda of the Legal Subcommittee" (A/AC.105/C.2/L.217 and Corr.1). The working paper is contained in annex IV to the present report.

74. Some delegations expressed their support for the proposal and considered that it provided a good basis for the discussion on matters relating to the future work of the Legal Subcommittee. Other delegations considered that, while the proposal provided a basis for further discussion on those matters, modifications would be required in the case of some of the elements contained in the proposal, such as the categorization of agenda items and the requirement of consensus to extend the consideration of some agenda items. Still other delegations were of the view that the proposal contained unacceptable elements and that they could not support it.

75. Some delegations expressed the view that the proposal contained in a working paper presented by Germany (A/AC.105/C.2/L.217 and Corr.1) could constitute the basis for a consensus at the 1999 session of the Committee while additionally taking into account the views expressed by other delegations.

76. A proposal by Italy containing revisions to the text of the proposal of Germany was made available to the Subcommittee in a conference room paper (A/AC.105/C.2/1999/CRP.9) and is contained in annex IV to the present report.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 20* (A/52/20), annex I.

[2] Ibid.

[3] Ibid., *Fifty-third Session, Supplement No. 20* (A/53/20), para. 176.

[4] Ibid., *Forty-fifth Session, Supplement No. 20* (A/45/20), para. 143.

[5] Ibid., *Fifty-third Session, Supplement No. 20* (A/53/20), para. 175.

[6] Ibid., para. 145.

[7] Ibid., *Fifty-first Session, Supplement No.20* (A/51/20), para. 211 (c).

[8] Ibid., para. 180.

[9] Ibid., para. 181.

[10] Ibid., para. 175.

[11] Ibid., *Fifty-second Session, Supplement No. 20* (A/52/20), para. 130.

[12] Ibid., *Fifty-first Session, Supplement No. 20* (A/51/20), para. 152.

[13] Ibid., *Fifty-third Session, Supplement No. 20* (A/53/20), para. 152.

[14] Ibid., para. 153.

[15] Ibid., paras. 158 and 159.

Annex I

Report of the Chairman of the Working Group on agenda item 4, "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union"

1. At its 613th meeting, on 1 March 1999, the Legal Subcommittee re-established its Working Group on agenda item 4, "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union", under the chairmanship of Daniel Eduardo Amigo (Argentina).

2. The Working Group on agenda item 4 had before it the report of the Legal Subcommittee on the work of its thirty-seventh session, held in Vienna from 23 to 31 March 1998 (A/AC.105/698), which contained the report of the Chairman of the Working Group on that session (annex I). The Chairman referred the Working Group to the following documents that had been before the Subcommittee at its thirty-seventh session (see A/AC.105/698, paras. 30 and 31): the note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Add.1-5): the note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), submitted to it at its thirty-sixth session; the working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted by Colombia to the Subcommittee at its thirty-fifth session; the conference room paper (A/AC.105/C.2/1997/CRP.3/Rev.1) containing a compendium of relevant sections and/or documents referred to in the working paper submitted by Colombia, which had been before the Subcommittee at its thirty-sixth session; and the working paper prepared by the Secretariat in cooperation with the International Telecommunication Union (ITU) entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary orbit' with the existing regulatory procedures of the International Telecommunication Union relating to the use of the geostationary orbit" (A/AC.105/C.2/L.205), also before the Subcommittee at its thirty-sixth session.

3. On the question of the organization of its work, pursuant to a recommendation by its Chairman, the Working Group agreed that each aspect of the agenda item, namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, should be discussed separately by the Working Group.

4. The views expressed in the discussions of the Working Group are summarized below.

A. Definition and delimitation of outer space

5. There were no views expressed on the subject in the Working Group.

B. Geostationary orbit

6. The Working Group agreed that the Secretariat, in cooperation with ITU, should prepare an update of the working paper prepared by the Secretariat in cooperation with ITU entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary orbit' with the existing regulatory procedures of the International Telecommunication Union relating to the use of the geostationary orbit" (A/AC.105/C.2/L.205) and an update of the conference room paper (A/AC.105/C.2/1997/CRP.3/Rev.1) that would contain documentation on the subject of the geostationary orbit that had been adopted after the conference room paper had been issued, with a view to continuing the examination of the working paper submitted by the delegation of Colombia (A/AC.105/C.2/L.200 and Corr.1) to the Legal Subcommittee.

Annex II

Report of the Chairman of the Working Group on agenda item 5, "Review of the status of the five international legal instruments governing outer space"

1. At its 613th meeting, on 1 March 1999, the Legal Subcommittee established a working group on agenda item 5, "Review of the status of the five international legal instruments governing outer space", under the chairmanship of Vassilios Cassapoglou (Greece).

2. The Working Group on agenda item 5 had before it the report of the Legal Subcommittee on the work of its thirty-seventh session, held in Vienna from 23 to 31 March 1998 (A/AC.105/698). The Working Group also had before it a note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1) and working papers on the same subject submitted to the Subcommittee at its thirty-seventh session by Germany on behalf of the States members of the European Space Agency and States having signed cooperation agreements with the Agency (A/AC.105/C.2/L.211/Rev.1, chaps. I and II) and by the Russian Federation (A/AC.105/C.2/L.213).

3. At the first meeting of the Working Group, on 2 March, its Chairman recalled the tasks before the Group and the work plan of its deliberations as approved by the Legal Subcommittee and set out in the report of the Subcommittee on the work of its thirty-sixth session, held in Vienna from 1 to 8 April 1997 (A/AC.105/674, annex II, sect. B).

4. The views expressed in the discussions of the Working Group are summarized below.

5. Some delegations reported on the current status of and further intended action concerning accession to the five international legal instruments governing outer space.

6. Some delegations expressed the view that the note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1) contained valuable analyses of and concrete proposals on the elimination of obstacles preventing the universal acceptance of the five international legal instruments governing outer space that warranted further consideration.

7. Some delegations expressed the view that the five international legal instruments governing outer space were, by their nature, interdependent and that an overall approach should therefore be taken in their review and analysis in relation to possible future revision and amendment. The view was also expressed that the methodological approach to that review as proposed in the working paper submitted by the Russian Federation (A/AC.105/C.2/L.213) should be utilized.

8. Some delegations made suggestions concerning the structure of the report of the Working Group. In the view of one of those delegations, the report should consist of the following four sections: (a) current status of the five legal instruments and of space law; (b) main results of the analysis of the information submitted by States on that subject; (c) short-term recommendations to promote and strengthen the space law regime and its main principles; and (d) alternatives to and mechanisms for strengthening the space law regime. Another delegation expressed the view that the last two of the above categories could be merged. Still another delegation expressed the view that the report should be presented in a matrix format. The work of the Working Group could then be reflected within that format under the following categories of activities: (a) review of existing treaties; (b) possible new treaties; (c) amending existing treaties; (d) interpretation of treaties; (e) implementation of treaties; and, possibly, (f) the question of conferences of States parties to revise existing treaties, indicating the current extent of progress for particular activities within each category.

9. However, the view was also expressed that it was premature to consider the structure of the report of the Working Group at that stage of its deliberations, since many other issues existed that might first have to be considered. Examples of such issues included whether changes in historic reality had caused some existing legal provisions to become irrelevant, whether some instruments and/or mechanisms provided for within the instruments were too cumbersome or confusing and should therefore be improved and whether some provisions within the

instruments were being interpreted and implemented differently by various States parties.

10. Some delegations expressed the view that more attention should be paid to the issue of improving compliance with the provisions of the five international legal instruments governing outer space. One of those delegations noted that many Member States of the United Nations, and even States members of the Committee on the Peaceful Uses of Outer Space, had not yet become parties to the five instruments,

while other States might not be in full compliance with some of the provisions of the five international legal instruments or state practice that had developed on the basis of those instruments. That delegation was also of the opinion that certain intergovernmental organizations could also be prevented from acceding to some of the international legal instruments as a result of the failure of sufficient numbers of their own member States to become parties to the same instruments.

11. The view was expressed that if it was decided that any of the five international legal instruments governing outer space required amendment, such amendment could only be formally proposed by the States parties to the instruments in question. However, the view was also expressed that while it might be true that only States parties to the instruments could formally propose their amendment, the Legal Subcommittee should not be precluded from conducting a discussion on the subject within the terms of its mandate. In the view of that delegation, such a discussion, bearing in mind that the five international legal instruments governing outer space were closely linked, would be useful for the possible future improvement of the outer space law regime. That delegation was also of the view that one way to commence such deliberations would be to discuss the concept of "launching State", as proposed by some delegations.

12. The view was expressed that it would be preferable not to limit discussions to the concept of "launching State", but rather to compile a list of terms contained in the international legal instruments governing outer space that might require clarification. The discussions in the Working Group would then concern all those terms in their interrelationship and not only the term "launching State".

13. The Working Group agreed on the following recommendations on measures to be adopted in order to achieve the fullest adherence to the five international instruments governing outer space:

(a) States that have not yet become parties to the five international treaties governing outer space should be invited to consider ratifying or acceding to those treaties in order to achieve the widest applicability of the principles and to enhance the effectiveness of international space law;

(b) States should be invited to consider making a declaration in accordance with paragraph 3 of General Assembly resolution 2777 (XXVI) of 29 November 1971, thereby binding themselves on a reciprocal basis to the decisions of the Claims Commission established in the event of a dispute in terms of the provisions of the Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex);

(c) The issue of the strict compliance by States with the provisions of the international legal instruments governing outer space to which they were currently parties should be examined further with a view to identifying measures to encourage full compliance, taking into account the interrelated nature of the principles and rules governing outer space.

14. The Working Group also recommended that the Legal Subcommittee continue to examine agenda item 5 during its thirty-ninth session, in 2000.

Annex III

Work plan for implementation in connection with the item entitled "Commercial aspects of space activities"

Working paper submitted under agenda item 6 by Argentina

I. Introduction

1. Since the late 1980s, and in particular during the present decade, space activities have ceased to be an issue linked exclusively with States' activity in the public sphere and have become a major source of commercial dealings between States, with a substantial participation by the private sector. It is therefore imperative to establish the basic legal principles that are to govern commercial activities concerned with outer space.

2. Argentina believes that the United Nations Committee on the Peaceful Uses of Outer Space is the appropriate body to carry out such a task.

3. The objectives of the work to be undertaken on this item would focus on identifying possible international legal conflicts that may arise from the pursuit of commercial activities concerned with the use of outer space and on elaborating the draft texts of the legal principles and rules that should govern such activities.

II. Plan of activities

4. The following work plan is accordingly proposed for implementation during the first three years, which does not preclude the possibility that its development may give rise to issues that call for more extensive work:

First year

Identification of the commercial aspects of space activities that are liable to produce conflicts;

A request to be made to States members of the Committee on the Peaceful Uses of Outer Space, through the Secretariat, that they express their opinion in this connection;

A further request to States that they submit their domestic legislation and treaty instruments governing these matters.

Second year

Evaluation of the information received and preparation of preliminary draft guidelines or preliminary drafts of legal principles or rules;

Submission of the guidelines or draft principles or rules to Member States for examination.

Third year

Development of the preliminary draft guidelines or preliminary drafts of the legal principles or rules intended to resolve conflicts arising from commercial activities concerned with outer space.

Annex IV

Revision of the agenda of the Legal Subcommittee

A. Working paper submitted under agenda item 6 by Germany*

1. Following the discussions on revising the agenda of the Scientific and Technical Subcommittee, with the presentation of working paper A/AC.105/C.1/L.227, the present proposal for a revised agenda is intended to revitalize the discussion in the Legal Subcommittee by providing the opportunity for expanded substantive discussions of legal issues affecting the conduct of space activities. These discussions would be for the purpose of exploring the nature and scope of these issues, without any implication that the outcome of the discussion would lead, necessarily, to elaboration of legal principles or standards. Consistent with this approach, the revised agenda also affirms and revitalizes the role of the Committee on the Peaceful Uses of Outer Space in directing the work of its Legal Subcommittee, by providing a clear mechanism for the Committee to task the Legal Subcommittee and by creating four categories of agenda items.

2. The present working paper proposes to revise the agenda of the Legal Subcommittee as follows:

(a) The agenda of the Legal Subcommittee shall have four categories of agenda item:

I. Standing items, including "General exchange of views" and "Status of the outer space treaties" (to provide an opportunity for reports on any additional signature or ratification of these treaties);

II. Single issues/discussion items, which are decided upon the preceding year and which are generally discussed only for one year in the plenary: extending the discussion of such an item can only be made by consensus; these items are discussed in the plenary;

III. Items covered by a multi-year work plan discussed in working groups: the items for such work plans should have been discussed as single issues before;

IV. The fourth category is an item on future issues to be dealt with in the Legal Subcommittee: under this item issues can be proposed for becoming either single issues/discussion items or items covered by a work plan: the main Committee will then decide by consensus on the inclusion of such new items in the agenda of the Legal Subcommittee;

(b) The agenda of the Legal Subcommittee for the year 2000 should, following that, be composed in the following way:

I. Standing items

1. General exchange of views

2. Status of the outer space treaties

* On behalf of Austria, Canada, France, Greece, India, the Netherlands, Sweden and the United States of America.

II. Single issues/discussion items

3. Geostationary orbit

4. Delimitation

5. Nuclear-power sources

III. Work plans

6. Review of the status of the five international legal instruments governing outer space.*

7. For example, the concept of "launching State"

IV. New items

8. Legal Subcommittee proposals to the Committee on the Peaceful Uses of Outer Space for new items in categories II and III.

B. Amendments proposed by Italy to the working paper submitted under agenda item 6 by Germany**

1. *Paragraph 2 (a) I*

The phrase in brackets should be deleted.

2. *Paragraph 2 (b) I 1*

After the words "General exchange of views", the words "on legal issues arising from space activities such as commercialization, space debris and environmental protection, etc."[a] should be added.

3. *Paragraph 2 (b) I 2*

After the words "Status of the outer space treaties", the words ", including additional signatures or ratifications; and problems related to the interpretation and application of the provisions of those treaties, including the adequacy of those provisions in relation to the present situation and further developments"[b] should be added.

Notes

[a] The above-mentioned examples, without being an exhaustive list, are taken from proposals made by some delegations during the thirty-seventh session (see the draft report of the Chairman of the Legal Subcommittee to the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) (A/AC.105/C.2/1999/CRP.6)).

[b] This clarification would lead to a broader discussion—within the limit established in paragraph 1 of the working paper submitted by Germany—on different issues already mentioned by some delegations at the thirty-seventh session (see the draft report of the Chairman of the Legal Subcommittee to the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) (A/AC.105/C.2/1999/CRP.6)) and during the thirty-eighth session (*inter alia*, by Argentina, Italy, the Russian Federation and the United States of America).

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* This item is not a new agenda item. It is currently being considered by the Legal Subcommittee under a work plan that includes its consideration in the year 2000.

** On behalf of Austria, Canada, France, Greece, India, the Netherlands, Sweden and the United States of America.